

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.425 OF 2006  
IN  
NOTICE OF MOTION NO.4273 OF 2003  
IN  
L.C.SUIT NO.5047 OF 2003  
WITH  
CIVIL APPLICATION NO.514 OF 2006

ALONG WITH

APPEAL FROM ORDER NO.426 OF 2006  
IN  
NOTICE OF MOTION NO.4012 OF 2003  
IN  
L.C.SUIT NO.4773 OF 2003  
WITH  
CIVIL APPLICATION NO.515 OF 2006

Surinder Singh Bakshi ...Appellant

Versus

The Municipal Corpn. of Gr.Bombay

& Anr. ...Respondents

.....

Mr.Girish Desai with Mrs.Geeta Shastri i/b

M/s.Khilnani & Co.for Appellant.

Mrs.Geeta Joglekar for Respondent No.1.

.....

**CORAM: A.M.KHANWILKAR, J.**

**JUNE 29, 2006.**

**P.C.**

1. Heard Counsel for the parties. Perused

the relevant pleadings and documents on record.

2. I have no difficulty in upholding the finding of fact as recorded by the lower Court. The lower Court has rightly noted that none of the documents produced by the Appellant would indicate that WC Block and MS Platform were in existence since long. The Court below has also rightly noted that both these structures are situated in open space of the building. There can be no permission to construct WC Block and MS Platform in open space of the building. These two structures are not forming part of existing hotel premises, as can be seen from the suit notice. The tenancy agreement which is pressed into service by the Appellant pertains to existing hotel premises only.

3. Suffice it to observe that the finding of fact recorded by the Court below that the Appellant has failed to establish that the structure was authorised structure, will have to be accepted as it is. To get over this position, Counsel for the Appellant would contend that the Appellant has been inducted as tenant in the suit premises in 1998.

The offending structures were in existence prior to 1998 and the Appellant has inherited the same from his predecessors. The argument seems to be attractive. However, that will have to be turned down on the reasons recorded by the Court below, as can be discerned from Paragraph 7 to 8 of the impugned Judgment. The Court below has found that in fact, the photographs relied on by the Appellant would show that the structure has been recently constructed. Even if this observation was to be ignored, the Appellant has not substantiated his case that the suit structure was in existence prior to 1998 when he took over the tenancy. As is mentioned earlier, the tenancy is confined to the existing hotel premises, the suit structure viz WC Block and MS Platform were constructed in the open space of the building where no structure could be permitted.

4. Viewed thus, the offending structures are unauthorised structures. No fault can be found with the ultimate decision of the lower Court in rejecting the Notices of Motion. Hence, dismissed.

5. At this stage, Counsel for the Appellant prays that the offending structures be protected for a period of three weeks to enable the Appellant to explore the possibility of regularisation of those structures. It is therefore ordered that no precipitative steps be taken with regard to the suit structure for a period of three weeks from today. If no application is made to the Executive Engineer, Building Proposal, C & T within three weeks from today, it will be open to the Officers of the Corporation to proceed against the suit structures in accordance with law.

A.M.KHANWILKAR, J.